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10/695,948	10/30/2003	Mark Henry Butler	300202359-2	6277

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EXAMINER	
JAKOVAC, RYAN J	
ART UNIT	**PAPER NUMBER**
2445	

NOTIFICATION DATE	DELIVERY MODE
06/09/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/695,948	BUTLER, MARK HENRY	
	Examiner	Art Unit	
	RYAN J. JAKOVAC	2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,54 and 57-60* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,54 and 57-60* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 04/28/2010 in regards to claims 1-5, 57-58, and 60 have been fully considered but they are not persuasive.

2. Applicant argues in summary that the combination of Logston, Windows NT Server, and Shultz does not disclose "a report that includes characteristics of any intermediary devices in a network path between the client devices and the server." However, the Examiner respectfully disagrees. At least Shultz clearly discloses this limitation. For instance, Shultz discloses that the PathPing utility displays a report (Shultz, pg. 2, PathPing generates a "very detailed statistical report".) including the loss rates for routers. The routers are intermediary devices (Shultz, pg. 3-5). Further, Shultz discloses that the FQDN and IP address (i.e. characteristics of any intermediary devices) of each gateway (i.e. intermediary device) on the route is displayed.

3. Regarding Applicant's arguments directed towards "periodically notifying", i.e. "the report is sent out periodically", the Examiner respectfully disagrees that Windows NT Server does not disclose this feature. For Example, pg. 12 of Windows NT Server states that a "periodic update interval" is used and that values are sampled and logged (i.e. creating a report) at this interval. Pg. 13 discloses that the log file increases in proportion to the logging interval. Pg. 15 discloses that objects such as local or remote computers can be logged according to parameters which include the update interval parameter. Applicant argues that this amounts to the logs being sent out "as requested by the user at his leisure", however, the user does not simply create one

report according to the settings, but rather these logging conditions these settings are used for long term sampling. Counter values are sampled, logged, and provided on a continuous time interval through periodic updates. Regarding the Applicant's arguments directed towards the report being "sent out periodically to a master monitoring processor" it is noted that the report is sent out from software modules which process the reports to the processor(s) of the server. It is further noted that Logston discloses proactively sending data out of the server (according to claims 3-4) to the network in at least paragraphs [0048-0062] (see also fig. 4-4a).

4. Applicant's arguments with respect to claims 54 and 59 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-5, 57-58, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0032754 to Logston et al (hereinafter Logston) in view of Windows NT Server and further in view of "Configure IT Quick: Give the PathPing utility a GUI front end" by Greg Shultz, hereinafter Shultz.

Regarding claim 1, 5, Logston teaches a networkable resource server adapted in use to serve out resources to client devices of a network (Logston, abstract, transfer of device resource and configuration information, distribution of entity components, also, paragraph [0037], paragraph [0042-0043], server serves resources to client, also, paragraph [0055], client query to server. Fig. 1, client server relationship.), the server having delivery context aware activity software which when run on a processor of the server causes a report to be produced containing data related to delivery context aware requests, received by the server for resources (Logston, paragraph [0046], server contains database of configuration information relating to client devices, See at least paragraphs [0048-0049], [0052], [0059], [0061], [0082].),

Logston does not expressly disclose wherein the report includes information concerning characteristics of the server, network characteristics linking the server and the client devices, characteristics of the client devices, wherein the report is sent out periodically to a master monitoring processor, to thereby notify the master monitoring processor of context delivery related information that has changed since the master monitoring processor was last updated.

However, Windows NT Server discloses information concerning characteristics of the server (Windows NT Server, pg. 2-3, how often the server is accessed (user logons).), network characteristics linking the server and the client devices (Windows NT Server, pg. 2-3, auditing of network access to files and server objects.), characteristics of the client devices (Windows NT Server, pg. 2-3, auditing of changes to user rights, logins, process tracking.), wherein the report is sent out periodically to a master monitoring processor (Windows NT Server, pg. 12 "periodic update interval" is used and that values are sampled and logged (i.e. creating a report) at this

interval. Pg. 13, log file increases in proportion to the logging interval. Pg. 15, objects such as local or remote computers can be logged according to parameters which include the update interval parameter. Auditing reports are sent to the event viewer.), to thereby notify the master monitoring processor of context delivery related information that has changed since the master monitoring processor was last updated (Windows NT Server, see at least pg. 410-411, updated reports are generated and viewed. updated reports are distinguished by time, date, and category.).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine wherein the report includes information concerning characteristics of the server, network characteristics linking the server and the client devices, characteristics of the client devices, and characteristics of any intermediary devices in a network path between the client devices and the server as taught by Windows NT Server with the networkable resource server of Logston in order to maintain a log of audited events relating to server access (Windows NT Server, pg. 404). It would have been further obvious to combine wherein the report is sent out periodically to a master monitoring processor to thereby notify the master monitoring processor of context delivery related information that has changed since the master monitoring processor was last updated in order to audit and monitor system events (Windows NT Server, see at least 404-411.).

The combination of Logston and Windows NT Server does not expressly disclose wherein the report includes characteristics of any intermediary devices in a network path between the client devices and the server.

However, Shultz discloses wherein the report includes characteristics of any intermediary devices in a network path between the client devices and the server (Shultz, pg. 2, "PathPing …

generates a very detailed statistical report that can better determine the cause of the network problem.". PathPing traces a packet to a remote computer, showing how many hops the packet requires to reach the host and how long each hop takes. Pg. 3, Latency associated with each intermediary device.)

Therefore it would have been obvious to combine wherein the report includes characteristics of any intermediary devices in a network path between the client devices and the server as taught by Shultz with the teachings of Logston and Windows NT in order to utilize a detailed network report to analyze problems in a network (Shultz, pg. 2.).

Regarding claim 2, the combination of Logston, Windows NT Server, and Shultz teaches a server and computer readable medium according to claim 1 and 19 adapted to transmit the report externally of the server to another processor (Logston, paragraph [0048], [0062]. information sent to external and remote computers. See also paragraph [0082]).

Regarding claim 3, The combination of Logston, Windows NT Server, and Shultz teaches a server and computer readable medium according to claim 1 and 19 in which there is provided a data log held in a data log memory, the data log being adapted to store data on activity of the server, including information on delivery context aware activity (Logston, paragraph [0046], server contains database of configuration information relating to client devices, See at least paragraphs [0048-0049], [0052], [0059], [0061], [0082].), and wherein the delivery context aware activity software is adapted to interrogate the data log to obtain the data related to delivery context aware requests for resources received by the server (Logston,

paragraph [0082], statistics calculated and stored in database.), which is adapted to cause acquired data to be sent out of the server proactively, without an input trigger signal from outside of the server (Logston, [0059-0062], data is sent proactively out of the server to a plurality of remote databases. See also, fig. 4-4a.).

Regarding claim 4, The combination of Logston, Windows NT Server, and Shultz teaches a server and computer readable medium according to claim 1 adapted proactively to send out said report onto the network to which the server is connected (Logston, paragraphs [0048-0049], [0062].).

Regarding claim 57, The combination of Logston, Windows NT Server, and Shultz teaches a server according to claim 1, wherein the report is sent out periodically to the master monitoring processor at a fixed update frequency (Windows NT Server, pg. 12 "periodic update interval" is used and that values are sampled and logged (i.e. creating a report) at this interval. Pg. 13, log file increases in proportion to the logging interval. Pg. 15, objects such as local or remote computers can be logged according to parameters which include the update interval parameter. Auditing reports are sent to the event viewer.).

Regarding claim 58, The combination of Logston, Windows NT Server, and Shultz teaches a server according to claim 1. The combination of Logston and Windows NT Server does not expressly disclose wherein the report includes information as to a fraction of client devices that are currently seeking resources from the server that use profile differences.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). SEE ALSO MPEP 2114.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

Regarding claim 60, The combination of Logston, Windows NT Server, and Shultz teaches a server according to claim 1, wherein the report includes information selected from the following: success rate for requests made by the server to obtain reference profiles; whether churn is occurring in a cache of reference profiles; a level of usage of specific profiles in a cache of reference profiles; a proportion of requests for resource received by the server that contain delivery context information; errors detected in reference profiles; vocabulary in a profile that is unrecognized by the server; a proportion of requests for resources, or of client devices making requests for resources, that use profile differences; a number of intermediary devices and/or settings that influence the delivery context (Shultz, pg. 2-5, PathPing report on intermediary devices.).

7. Claim 54 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logston in view of Windows NT Server, Shultz, Applicant's Admitted Prior Art (hereinafter AAPA), and further in view of US 5,732,240 to Caccavale.

Regarding claim 54, 59, The combination of Logston, Windows NT Server, and Shultz teaches a server according to claim 1,

AAPA discloses wherein the server further comprises a profile resolver which receives from at least one of the clients details of a profile difference, and details of a reference profile related to the at least one of the clients (AAPA, [0012], "CC/PP and UAProf break up the profile into two sections: the reference profile, representing a standard profile for that kind of client device, and a list of perturbations, or overrides, specific to the specific instances of the kind of device, specific to the actual client device making the request. These are known as the "profile-difference" (or profile-diff). See AAPA, [0011], "There are currently at least two standards used by client devices to describe their capabilities to data work supply devices, such as web servers: Composite Capabilities/Preferences Profile (CC/PP) (created by the world-wide web consortium), and User Agent Profile (UAProf) (created by the WAP forum). CC/PP and UAProf enable a client device to specify its capabilities, and enable intermediary devices to specify their capabilities. These capabilities, along with the capabilities of the network service between the client device and the work supplier device, comprising the delivery context, can be used by delivery context aware resource supplier devices to perform content specialization (i.e. adapt, select, or generate content based on the delivery context information), as discussed"), and

which references a cache memory to create a profile of the at least one client device using a profile-diff transmitted to the server by the at least one client device and the reference profile retrieved from the cache memory (AAPA, [0013-0014], "When a delivery context aware work supply device, such as a server, receives a request for a data work (e.g. a HTTP request) from a client device which has conveyed with it delivery context information it currently retrieves the reference profile and merges it with the profile-diff in a profile resolution operation to establish the profile of the target client device." "Servers are known to cache reference profiles in a local memory to reduce the time, and/or bandwidth, needed for profile resolution."); and

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine wherein the server further comprises a profile resolver which receives from at least one of the clients details of a profile difference, and details of a reference profile related to the at least one of the clients, and which references a cache memory to create a profile of the at least one client device using a profile-diff transmitted to the server by the at least one client device and the reference profile retrieved from the cache memory as taught by AAPA with the combination of Logston and Windows NT Server in order to allow client devices to describe their capabilities to web servers to resolve client profiles (AAPA, [0011-0014].).

The combination of Logston, Windows NT Server, Shultz, and AAPA do not expressly disclose wherein the server is configured to modify the cache memory in response to the delivery context aware activity software, and wherein the modifying the cache memory includes changing the size of the cache memory.

However, Caccavale discloses these limitations in at least the abstract, col. 2:5-33, col. 3:1-20, col. 10:1-25.

Therefore it would have been obvious to combine wherein the server is configured to modify the cache memory in response to the delivery context aware activity software, and wherein the modifying the cache memory includes changing the size of the cache server as taught by Caccavale with the combination of Logston, Windows NT Server, Shultz, and AAPA in order to dynamically improve the performance on a server in a network in response to service requests and performance characteristics of the server (Caccavale, abstract, col. 10:1-25).

Conclusion

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan Jakovac/

/VIVEK SRIVASTAVA/

Supervisory Patent Examiner, Art Unit 2445